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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re: _____)
Revision of Part 22 of the Commission's)
Rules Governing the Public Mobile Services)

CC Docket No. 92-115

PETITION FOR RECONSIDERATION AND CLARIFICATION

Page America Group, Inc. ("Page America"), one of the nation's leading providers of paging services, hereby respectfully petitions the Commission to reconsider or clarify certain of the revised rules (the "Revised Rules") adopted in its Report and Order in the above captioned proceeding, released on September 9, 1994 ("Report and Order").^{1/} As discussed in greater detail below, some of the Revised Rules that concern the provision of paging services may have an unnecessarily detrimental effect on the commercial operations of paging carriers such as Page America. Additionally, certain aspects of the Revised Rules require clarification.

DISCUSSION

A. Service to Subscribers

Under the Revised Rules, paging permittees will be required both to complete construction of a new station and to "commence service to subscribers" on that station by the end of the construction period set forth in a construction permit ("CP"). Report and Order at 16, B-22 (Revised Rules § 22.142). "Service to subscribers" is defined as "[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier." Id. at B-

^{1/} The Revised Rules appeared in the Federal Register on November 17, 1994. Public Mobile Services, 59 Fed.Reg. 59502 (to be codified at 47 CFR Parts 1 and 22).

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12 (Revised Rules § 22.99). Failure to meet this service deadline will result in automatic termination of the authority granted under the CP, Revised Rules § 22.144(b), and will bar the permittee from filing a subsequent application on the same channel within 40 miles of that facility for one year after the termination, Id. § 22.121(d).

Page America appreciates the Commission's desire to prevent spectrum warehousing by permittees that do not use authorized facilities to provide service in a reasonable timeframe. Establishing simultaneous construction and service deadlines on a station-by-station basis, however, ignores the fact that most paging transmitters cover a relatively small portion of the minimum geographic area over which a paging carrier can commercially offer paging service.

For example, in a typical metropolitan area, the service contour for a single-channel paging network necessarily encompasses coverage areas of many individual stations, arranged to provide coverage over large distances and to overcome signal losses caused by buildings and other features. Paging traffic is simulcast over many stations, so that each subscriber can receive messages anywhere within the city and surrounding metropolitan area. Wide-area paging is a critical element in the carrier's service offering, and, given the choice, a typical business paging customer will not subscribe to a service that covers only a portion of one market, rather than the entire metropolitan area.

Establishing a multi-station network can be a lengthy process, involving finding suitable transmitter sites, preparing engineering, negotiating leases, applying for and obtaining CPs, and constructing facilities. Each of these steps must be completed for each new station, and the typical carrier has a number of stations at various stages in this process.

Meeting the arbitrary requirement that each new station in an incomplete network begin providing subscriber service, even before sufficient geographical coverage can be established to meet subscribers' actual needs, would be at best impractical, and at worst impossible. Until a viable wide-area network has been built out sufficiently to begin offering meaningful service to subscribers, paging permittees will often not be able to attract subscribers to their systems. Up to the time that a critical mass of operational transmitters are available,

construction of some stations in the network will have been completed while others are being installed, others are awaiting grant of CPs, and still others are being planned.

To account for the time required to build marketable wide-area networks, Page America proposed an alternative definition for "service to the public" in its original comments on the Notice of Proposed Rulemaking in this proceeding.^{2/} The proposed language, modified to substitute "service to subscribers" for "service to the public" and incorporating the definition contained at Section 22.99 of the Revised Rules, is as follows:

A licensed station is considered to be providing service to subscribers for purposes of this Part if it is fully constructed and operational in accordance with the authorization, and: (1) is being used to provide paging service to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier, or (2) will be used to provide such service as part of a multiple-facility paging system that is under development on the date specified on the station authorization for commencement of service. The permittee or licensee may evidence good faith efforts to develop such a multiple-facility system by filing applications for authorizations on the same channel as the station in question in neighboring locations, or initiating significant marketing efforts intended to establish the eventual subscriber base for the new system.

Page America requests that the Commission reconsider the "service to subscribers" requirement as currently expressed in the Revised Rules, and substitute a new definition, in substance like that set forth above, for the definition of "service to subscribers" now contained at Section 22.99.

In addition, If the requirement that every new terminal carry subscriber traffic by the end of the construction period is to be retained, then Page America requests clarification of its applicability when an additional station is added to an operational wide-area paging network such as that described above. Page America submits that the requirement would be met as soon as the new station began simulcast paging traffic for at least one non-affiliated subscriber

^{2/} At the time those comments were filed, October 5, 1993, the proposed rules used the term "service to the public," rather than "service to subscribers." However, the requirement to provide actual service by the expiration of the construction period is the same, and Page America's proposal continues to be applicable.

by the end of the construction period, even though no new subscribers were added and no individual subscriber could be uniquely associated with the new station.

B. Repetitious Applications

Under the Revised Rules, the Commission will not grant an application for a new station within one year of termination of a prior authorization on the same channel in the same geographical area by the same party. According to the discussion of Revised Rules Section 22.121, this policy "applies only to situations where the [prior] authorization automatically terminates." Report and Order at A-11. In the same discussion, the Report and Order states that the one-year ban "does not apply to situations where the licensee submits an authorization for cancellation." Id. The text of Section 22.121(d), however, states that the Commission will not consider a second application if the earlier authorization "is voluntarily cancelled or automatically terminated for failure to commence service to subscribers." Id. at B-16 (Revised Rules § 22.121(d) (emphasis added)). Thus, the text of the rule appears to be inconsistent with the discussion, in precluding filing a subsequent application within one year after voluntarily submitting an authorization for cancellation.

In a wide-area paging system like those described in Section A, above, the paging carrier is sometimes forced, or may decide, to voluntarily terminate a CP prior to construction. This may occur for a variety of legitimate technical or business reasons, such as cancellation of a lease, loss of a prospective customer for whom the proposed station was intended to provide enhanced coverage, or emergent availability of a preferable site within the same geographical area, making the original site unnecessary.

Under Revised Rules Section 22.121(d), a carrier confronted with one of these or other similar circumstances, who voluntarily turns in the authorization in question, would be unable to obtain a new authorization on the same channel within 40 miles of the previous site for one year. Enforcement of the rule as now worded would restrict flexibility in meeting

customer's service needs and limit the ability to compete in the paging marketplace. Therefore, Page America requests that the voluntary cancellation language now contained in Section 22.121, which is inconsistent with the discussion in Appendix A of the Report and Order and largely irrelevant to the purpose of the repetitive application policy, be removed from the text.

C. Additional Channel Policy

Page America applauds the Commission's determination that traffic loading studies for obtaining a second channel in the same geographical area are unnecessary and burdensome. The new requirement to complete construction and commence service on a single transmitter before even applying for a nearby station on a second channel, however, is unnecessarily restrictive, and should be reconsidered. See Report and Order at 23, B-41 (Revised Rules § 22.539).

Paging companies often have multiple networks that cover the same geographic areas using different channels. Further, companies often need to expand coverage of multiple networks into new geographical areas, or need to expand existing channel coverage while simultaneously establishing new channels in the same geographical area. The Commission has recognized one such situation in the Revised Rules, providing that an application for an additional station on a channel on which the carrier already provides service in the same geographical area is not a request for an additional channel for purposes of Section 22.539. Revised Rules § 22.539(e). For reasons that are unclear, however, the rule distinguishes a similar expansion on another channel.

Geographic expansion of existing paging channels is often driven by increasing subscriber demand. In some cases, it is expedient to increase capacity on the same channel in areas that are separated geographically, before constructing co-channel stations in areas of lower demand that lie in between. For example, paging subscribers that use existing channels in the city also may need simulcast service in outlying towns. In such cases, the carrier may find it

necessary to expand more than one channel, or establish additional stations on new channels, depending on spectrum availability, in the same area over a short timeframe.

The time involved in obtaining authorizations and in construction, often more than a year, already limits a carrier's responsiveness to changing subscriber needs. Now, as the new rules suggest, the delays in establishing new channels in a single area will be consecutive rather than concurrent. Thus, while giving with one hand, by removing the loading study requirement for a second channel in the same area, the Commission takes away with the other, by extending the time required to establish that second. Even if a demand showing could have been made under the old rules, the new rules will not allow a second channel even to be applied for until the first has been placed in service.

Page America believes that the Commission's objective of preventing warehousing can effectively be met by enforcing the "service to subscribers" requirement, modified as described above. Each new station authorized must be used to provide service, or must be part of a larger network, existing or under development, by the end of the construction period. The further obligation of putting each new channel into service before even being permitted to apply for additional channels is an unnecessary burden, and will adversely affect the ability to provide improved service to subscribers.

D. Sharing of Transmitters

In the Report and Order, the Commission noted that it would not adopt a rule permitting shared use of transmitters by multiple licensees. Report and Order at 31. It is Page America's understanding that such sharing arrangements, through the use of multiple-frequency transmitters, are fairly common, especially where one or more of the licensees in question is a relatively small paging company having limited resources. Moreover, Page America is unaware of which of the Commission's rules, existing or revised, that expressly prohibits such an

arrangement, so long as each licensee retains sufficient control of transmissions of its respective traffic to ensure adherence to the Commission's rules.

Purchase and installation of new transmitter equipment typically costs well in excess of \$20,000 per location. Many companies have difficulty expanding coverage, and competing effectively with larger carriers, because of the expense involved in establishing new stations. This limitation can be overcome to some extent with multiple-channel transmitters that can support the needs of more than one licensee on a time-share basis.

The Commission expresses concerns regarding accountability for shared transmitter operations, yet cites no instances of past problems in this regard.^{3/} Even where transmitters are shared, each licensee is required to ensure that transmissions from its authorized facilities, on its authorized channels, comply with the Commission's rules. The Commission's concerns appear to center on its ability to enforce this requirement for multiple-licensee facilities. Page America recommends that the Revised Rules be modified to permit shared use of transmitters, and to require applicants for stations that are to be shared to so indicate in their applications. Further, licensees exercising control over shared transmitters should be required to cooperate in resolving technical issues, such as co-channel interference, that arise from employment of such shared transmitters by other licensees.

If the Commission determines not to adopt this proposal, then Page America requests that the Commission provide clarification as to which provisions of the rules are violated by such arrangements. In view of the apparent confusion among licensees regarding the

^{3/} The Commission also points out that use of shared transmitters could result in broader service disruptions due to equipment outages than in the case of single-user facilities. While this is mathematically correct, Page America submits that the benefits to the public from increased competition as smaller carriers avail themselves of new locations using shared transmitters far outweigh the increased risk of service disruptions. Moreover, with two licensees having responsibility for subscriber traffic sent over the shared transmitter, each will be constrained to help ensure compliance with the Commission's rules by the other.

propriety of shared transmitter use, Page America further recommends that the Commission "grandfather" such facilities, at least for a period of time necessary for sharing licensees to procure and install dedicated equipment at authorized sites, which may include a number of facilities within wide-area systems, without any disruption in service.

E. 931 MHz Licensing Procedures

In the Report and Order, the Commission indicates that applicants with 931 MHz applications pending on the effective date of the Revised Rules will have 60 days to file amendments to those applications specifying the frequency requested for each. Report and Order at 41. The Commission goes on to state that any such amended applications that are initial applications under the Revised Rules will be placed on public notice and subject to competitive bidding procedures in the event mutually exclusive applications are properly filed. Id. at 45, 47-48. The Commission does not address whether pending 931 MHz applications that already request specific frequencies are to be subject to the same amendment, public notice and auction requirement. Page America submits that such applications should be processed under the existing rules.

The apparent reason for requiring amendment of pending 931 MHz applications that do not request specific frequencies is so that they may be processed under the Revised Rules. See Revised Rules § 22.529. Public notice of applications that are amended to show specific frequencies requested provides other carriers the opportunity to file mutually exclusive applications for those frequencies.

For pending 931 MHz applications that already specify frequencies, and have already appeared on public notice, however, such opportunity has already been provided. If the Commission imposes its requirement of amendment and public notice with regard to such applications, it will subject them to further delay, and to unnecessary additional risk that mutually

exclusive applications be filed. This would amount to "double jeopardy" for those applicants that have already complied with the Revised Rules.

Further, in circumstances where sufficient 931 MHz channels are already available in given geographical areas to accommodate all pending applications in those areas, regardless of whether they all specify the frequencies sought, the Commission should proceed to select and authorize the available channels among such pending applicants. Applications that request specific frequencies should be authorized on those channels, and the remaining applications should receive remaining channels. Page America submits that such application groups are not mutually exclusive, so long as no two applications seek the same frequency in the same area, and requiring further amendment and public notice merely delays the provision of service to the public.

Page America requests that the Commission clarify its decision concerning pending applications that already seek specific frequencies in the 931 MHz band, and those that are not mutually exclusive because sufficient channels are available to satisfy all pending requests in the same geographical area, by announcing that they will be processed under the existing rules, without further amendment and public notice.

F. Competitive Bidding Procedures

The Commission has declared its intention to grant licenses for 931 MHz channels that are the subject of mutually exclusive applications using competitive bidding procedures. Report and Order at 10, 45. Other services that have been licensed by auction to date have been the subjects of lengthy rulemaking proceedings to determine how such auctions should be conducted. Moreover, such services have been auctioned on a nationwide or regional basis, with application cutoff dates to determine eligible bidders, and have involved open bidding procedures that permit multiple rounds of bids for each license.

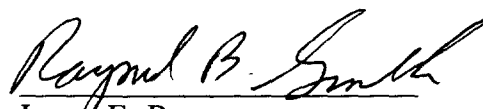
In view of the continuous nature of the paging application process, and the large number of licenses required to effectively operate a wide-area paging system, Page America requests that the Commission move expeditiously to adopt streamlined auction rules for paging licenses. For example, paging auctions should involve sealed bidding procedures by mutually exclusive applicants, with only a single round of bids to be submitted within a short time after the public notice period for the initial application. In this way, the process can be completed quickly, and competing bidders will not be forced into overly lengthy and burdensome auction proceedings to obtain licenses for facilities that represent relatively small expansions of wide-area systems.

CONCLUSION

Page America commends the Commission's efforts to update Part 22, and supports most of the changes embodied in the Revised Rules. Page America respectfully requests that the Commission reconsider or clarify, as appropriate, the Revised Rules as discussed herein.

Respectfully submitted,

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